

Appl. No. 09/848,520
Atty. Docket No. 8070ML\$
Amdt. dated February 28, 2005
Reply to Office Action of 11/30/2004
Customer No. 27752

REMARKS

Claims 17-22 are rejected under 35 USC §112, second para. Particularly, the Office Action states that the claims do not distinctly define the metes and bounds to be protected by the patent grant. The Office Action specifically states the language "receiving values for a plurality of parameters" is unclear.

Claim 17 has been rewritten. The claim retains its original scope, but eliminates the "receiving values" language said to be unclear. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Claims 18, 20 and 21 are rejected under 35 USC §101 as drawn to non-statutory subject matter. Specifically, the Office Action states that the claims rejected under 35 USC §101 do not recite limitations that define the signal-bearing medium and, accordingly, do not recite a tangible result.

Applicants respectfully note independent Claim 17, from which Claims 18-21 depend, was not rejected under 35 USC §101. Claims 18-21 incorporate all the limitations of Claim 17, from which they depend. 35 USC §112, fourth para. Accordingly, if Claim 17 recites a tangible result and is therefore statutory, likewise, the claims dependent therefrom must also be statutory.

In any case, Claim 18 recites a program product (i.e., computer program) in a program of machine-readable instructions. Claims 19-20 recite a program product comprising an optical disk, magnetic disk, portion of a computer network, or carrier wave. Each of these represents a computer program in a different tangible medium.

Even if the limitations of independent Claim 17 did not carry through to the dependent claims, the Court of Appeals for the Federal Circuit has already decided this matter. Specifically, the Commissioner of the U.S. Patent and Trademark Office has taken the position that a computer program embodied in a tangible medium is patentable subject matter under 35 USC §101. The Commissioner's position was upheld by the Court of Appeals for the Federal Circuit. *In re Beauregard*, 53 F.3d 1583, 35 USPQ 2d (BNA) 1383 (Fed. Cir. 1995). Accordingly, the Examiner is respectfully requested to

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reconsider and withdraw any rejection of claims directed to a computer program embodied in a tangible medium of expression – as occurs hereunder.

Claims 1-22 are rejected under 35 USC §102(a) as anticipated by “A *Quick Overview of ReliSoft's BlockSim*” product description BlockSim 1.0 by ReliSoft Corp. dated January, 2000. “A *Quick Overview of ReliSoft's BlockSim*” teaches mean time to failure (p. 1), expected number of failures (p. 2), mission time as related to reliability and probability of failure (p. 3), system and component uptimes (p. 4), and failure characteristics of an existing diagram (p. 6).

However, this reference does not teach calculating an uptime for each failure mode as required by Claims 1 and 17, as amended hereunder. This limitation was added from dependent Claims 4 and 5. Accordingly, Claim 4 is canceled hereunder.

Claim 5 is amended to further specify that at least one of the uptimes has a value of zero. Basis is found in the specification (20:25-21:14). The cited reference fails to teach a system having a zero uptime. Instead, ReliSoft treats such an occurrence as one continuous downtime.

Furthermore, the ReliSoft reference fails to teach plural failure modes, including cumulative cause failure modes and competing cause failure modes, as required by Claim 9. Instead, the ReliSoft reference is limited to competing cause failure modes and makes no provision for cumulative cause failure modes.

Given that the prior art fails to teach providing a downtime distribution for each failure mode (as required by Claims 1 and 17), a failure mode having zero uptime (as required by Claim 5), and cumulative cause failure modes (as required by Claim 9), the Examiner is respectfully requested to reconsider and withdraw all rejections based upon the cited prior art.

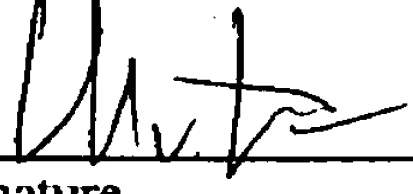
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Applicants respectfully submit the application is in condition for allowance. The Examiner is respectfully requested to reconsider and allow all claims remaining in the application.

Respectfully submitted,

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